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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 MICHAEL FRANCIS MOYNIHAN, JR.,

9 Plaintiff,

10 v.

11 ATTORNEY GENERAL OF  
12 WASHINGTON,

13 Defendant.

CASE NO. C11-5896BHS

ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS

14 This matter comes before the Court on Defendant Washington State Office of the  
15 Attorney General's ("AGO") motion to dismiss (Dkt. 11). The Court has considered the  
16 pleadings filed in support of the motion and the remainder of the file and hereby grants  
17 the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On November 17, 2011, Plaintiff Michael Francis Moynihan, Jr.'s ("Moynihan")  
20 filed the complaint in this action. Dkt. 4. Moynihan appears to allege violations of the  
21 Freedom of Information Act, 5 U.S.C. § 551, *et seq.* ("FOIA"), for AGO's failure to  
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1 comply with a request to produce documents under the Act. Dkt. 4. On March 9, 2012,  
2 AGO filed a motion to dismiss the complaint. Dkt. 11. Moynihan did not respond.

## 3 **II. DISCUSSION**

4 As an initial matter, the Court notes that it may consider a party's failure to  
5 respond to a motion as an admission that the motion has merit. Local Rule CR 7(b)(2).  
6 Moynihan failed to respond to AGO's motion, and, as discussed below, the Court  
7 concludes that AGO's motion has merit, and should be granted.

8 With regard to the merits of the motion, the Court concludes that Moynihan's suit  
9 is barred by the Eleventh Amendment and that Moynihan has failed to state a claim upon  
10 which relief may be granted. First, an unconsenting state is immune from suits brought  
11 in federal courts by its own citizens. *See Edelman v. Jordan*, 415 U.S. 651, 662-63  
12 (1974). Washington has not waived its Eleventh Amendment immunity for suits such as  
13 the one presented here. *Clallam Cnty. v. Dep't of Transp.*, 849 F.2d 424, 427 (9th Cir.  
14 1988), *cert. denied*, 488 U.S. 1008 (1989) ("Neither the State [of Washington] nor the  
15 agency waived the eleventh amendment immunity"). In this case, Moynihan has failed to  
16 show that Washington or AGO has waived its immunity to suit in federal court.  
17 Therefore, the Court lacks subject matter jurisdiction and grants AGO's motion to  
18 dismiss on this issue.

19 Second, under both the FOIA and the APA definitions, every "agency" is an  
20 "authority of the Government of the United States." 5 U.S.C. § 551(1). AGO is an  
21 authority of the state of Washington, not of the United States. Even when a state agency  
22 receives federal financial support and is heavily regulated by the federal government, it is

1 not an “agency” within the meaning of FOIA. *St. Michael’s Convalescent Hosp. v. Cal.*,  
2 643 F.2d 1369, 1373-74 (9th Cir. 1981). Accordingly, a claim in federal court seeking to  
3 force a state agency to disclose records under FOIA cannot succeed. *See Unt. v.*  
4 *Aerospace Corp.*, 765 F.3d 1440, 1447 (9th Cir. 1985). In this case, Moynihan has failed  
5 to show that AGO is subject to FOIA, and therefore, has failed to state a claim upon  
6 which relief may be granted.

### 7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that AGO’s motion to dismiss (Dkt. 11) is  
9 **GRANTED** and Moynihan’s claims are **DISMISSED with prejudice**.

10 DATED this 9<sup>th</sup> day of April, 2012.

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BENJAMIN H. SETTLE  
United States District Judge